

BOARD OF APPEALS MINUTES

October 8, 2002

On Tuesday October 8, 2002, at 7 p.m. the Clarence Board of Appeals will hear the following requests for variances:

APPEAL NO I Yongmi Oddo Major Arterial	Requests the Board of Appeals approve and grant a forty foot (40') variance creating a zero (0') lot line for the construction of a new sign at 6399 Transit Road.
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APPEAL NO I is in variance to L.L. 181-4 (A3), sign district specifications.

APPEAL NO II Scott & Diane Rogers Residential B	Requests the Board of Appeals approve and grant a seven foot (7') variance creating a thirty eight foot (38') front setback line for the construction of a new porch at 4284 Roxbury Drive.
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APPEAL NO II is in variance to Article III, section 30-15, Residential B uses

APPEAL NO III Frank Rivett Jr. Agricultural	Requests the Board of Appeals approve and grant a one one hundred foot (100') variance creating a two hundred foot (200') front yard setback line at 6285 Kraus Road.
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APPEAL NO III is in variance to Article V, section 30-27 B, size of yards.

APPEAL NO IV Ian McPherson Residential A	Requests the Board of Appeals approve and grant a ten foot (10') variance creating a twenty five foot (25') front lot line setback for the construction of a new garage at 5840 Creekview Drive.
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APPEAL NO IV is in variance to Article II, section 30-12 C, size of yards.

APPEAL NO V Robert Waters Residential A	Requests the Board of Appeals approve and grant two variances: 1. A two foot (2') variance creating an eighteen foot (18') height maximum for the construction of a new garage at 5220 Donnington Road. 2. A sixty four square foot (64 sq. ft.) variance creating a seven hundred eighty four (784 s. ft.) square foot detached garage at 5220 Donnington Road.
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APPEAL NO V is in variance to Article II, section 30-13 B, accessory buildings.

**APPEAL NO VI
Mary Ann Bliznik
Residential A**

Requests the Board of Appeals approve and grant a five foot (5') variance creating a five foot (5') side lot setback line for the construction of a new garage at 4250 Fireside Drive.

APPEAL NO VI is in variance to Article II, section 30-12 D, size of yards.

**APPEAL NO VII
Al Maroone Ford
Major Arterial & Commercial**

Requests the Board of Appeals approve and grant two variances:

- 1. A seventeen foot (17') variance creating a thirty seven foot (37') height for a freestanding sign at 4045 Transit Road.**
- 2. A seventy square foot (70 sq. ft.) variance creating a one hundred thirty square foot (130 sq. ft.) sign at 4045 Transit Road.**

APPEAL NO VII is in variance to L.L. 181-4 (A1 & A3) sign district specifications.

**APPEAL NO VIII
Linda Clark
Agricultural & Residential A**

Requests the Board of Appeals approve and grant a ten foot (10') variance creating a zero foot (0') front lot line setback for the free standing sign located at 8469 Sheridan Drive. (Country Park Child Care)

APPEAL NO VIII is in variance to L.L. 181-4 (B2) sign district specifications.

**APPEAL NO IX
Louis Tomassi
Residential A**

Requests the Board of Appeals approve and grant a one foot (1') variance creating a ten foot (10') garage door height at new home at 9276 Via Cimato Drive.

APPEAL NO IX is in variance to Article II, section 30-13 B, accessory structures.

ATTENDING: John Brady
John Gatti
Arthur Henning
Eric Heuser
Ron Newton
Raymond Skaine

INTERESTED
PERSONS Yongmi Oddo
Diane Rogers
Scott Rogers
Frank Rivett
Ian McPherson
Linda Clark
Marilyn Drnevich
Mary Ann Bliznik
Robert Waters
Richard Muck
Rick Beaver
Louis Tomassi

MINUTES Motion by John Gatti, seconded by Raymond Skaine
to approve the minutes of the meeting held on
September 10, 2002 as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO I
Yongmi Oddo
Major Arterial

Requests the Board of Appeals approve and grant a forty foot (40') variance creating a zero (0') lot line for the construction of a new sign at 6399 Transit Road.

DISCUSSION:

Sal Oddo represented his wife. Their setback is forty feet, and that would put the sign on the building. They have decided not to add on to the front of the building. The business is hard to locate and the sign will be the major way to identify the business. The size of the sign and the height of the sign comply with the Town ordinance. The sign is 56 square feet and the height is nineteen feet high. Their sign will not block the neighbors sign. The home next door was taken down to make way for the Holiday Retirement Home, however, the oak trees are going to stay. If they moved the sign back, it would be blocked by the oak trees.

ACTION:

Motion by John Gatti, seconded by Ray Skaine to approve Appeal No I as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II
Scott & Diane Rogers
Residential B

Requests the Board of Appeals approve and grant a seven foot (7') variance creating a thirty eight foot (38') front setback line for the construction of a new porch at 4284 Roxbury Drive.

DISCUSSION:

Mr. Rogers is building the porch himself, and he didn't realize there was a problem with coming forward. It is an open porch. No one on the board had a problem with the request.

ACTION:

Motion by Raymond Skaine, seconded by Ronald Newton to approve Appeal No II as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO III
Frank Rivett Jr.
Agricultural

Requests the Board of Appeals approve and grant a one hundred foot (100') variance creating a two hundred foot (200') front yard setback line at 6285 Kraus Road.

DISCUSSION:

Mr Rivett said his lot is roughly 670 feet deep. He would like to utilize some of the front property. He would like his small children to have a front yard they can play in without being close to the street. There is a cape cod home to the south approximately 600 to 700 feet away. They did not have a problem with a 200 foot setback. The house to the north is a duplex, it is not owner occupied. He went to visit the duplex and talked to one of the tenants. She said she would call the owner, and inform him of the variance request. He gave her his card, but never heard from the owner. Arthur Henning said *It seems to me that we would be setting a precedent here, so that all the other houses would have to be just about in line with this. Is that right? Because there is no one on either side. I don't feel that is a a problem, it's just my observation.* Ron Newton said *You had two stakes - was that the front of the house or the back of the house?* Mr. Rivett said *That would be the front of the house.* You see what happens here, if you are allowed to go back as far as you are going back, it looks like there is one lot to the north of you. The house that you call a duplex to the north of you is probably at 100 feet. Now between you back at 200 feet and them back at 100, what do we do with the lot in the middle? What would be something that we could set that at, so that you are not taking their backyard privacy away? Mr. Rivett said he currently lives on Clarence Center Road. His house is set back at 150 feet, and his neighbor is 160 feet away. It is the same exact situation. His neighbor is at 250 feet, he is at 150 feet. I don't have a problem with 100 feet. Mr. Rivett suggested splitting the difference between the duplex at 100 feet, 150 feet for the vacant lot and 200 feet for him.

Ron Newton said *We are here to have some uniformity and to protect the other people. It makes it difficult. You haven't really given us any reason besides the fact that you want to go back farther. You haven't stated that there is a hardship, or any other rationale for going back that distance other than you want to. The house to the south is back about 100 feet, and he looks to be about 3 lots away from*

you, and the house to the north is at about 100 feet. There is a line that is approximately established in that area at about 100 feet. Suddenly you come along and buy the lot pretty much in the middle of it, and you want to go back 200 feet, without any justification. It's not high ground, it's not drier, than the rest of it or anything else, and I am not in favor of that.® Mr. Rivett said AIt actually is a little higher back there, probably a foot to a foot and a half higher in some of the shots I have taken. I don't want to say that is the main reason, safety is my main reason, to get away from the road. Ron Newton said AYou have 600 feet if you really wanted safety, you could ask for 400 feet, and split the lot.® Mr. Rivett said he didn't want to be unreasonable, he felt 200 feet would be a reasonable request. He doesn't have a problem with the duplex, he knew that when he bought the lot. He has a duplex himself, he lives on one side and rents the other side. When his next door neighbor got a variance for 250 feet he did not have a problem, and does not have a problem. A difference of 100 foot, you cannot see in to the back of their home, you can see their backyard, but you cannot see into the back of their house from the front of my house. So, I don't think a 100 foot variance is out of the question. Cosmetically, I think it looks nicer to see a house setback. All the lots are going to be 160 feet wide, and 675 feet deep. I don't think I am going to be the only one looking for a variance. I think 200 feet would be a good number for the five homes that will go in there. Ron Newton said AI think if we were to look at this reasonably and to give you a little bit of what you are asking for, we would have to look at a step up. You have one at 100, maybe the next one at 125, and maybe yours at 150. We would have to try and hold that line because we have to come back down three lots away from you to the south, to the 100 foot setback line, and not make this look like a sawtooth. I can't see any other way of doing it. Mr. Rivett said AYou are not going to get a sawtooth effect with 50 foot. If you stagger me at 200 foot, and you stagger the next house at 150 foot because the lots are 160 feet wide. If they were only 100 feet wide, I would say yes, you are probably right, twenty five feet would be better. But you have an extra thirty feet on each side. I see exactly where you are coming from, but like I said for me to ask for a variance for 250 feet or 300 feet would be an unreasonable request. You would see a sawtooth effect, but 100 feet

between a 300 foot span would not be noticeable. Ray Skaine said AYou are only talking about one house, I did walk back there. I saw the second house to the north also. I looked right back in their backyards, and I disagree with you, because from that corner I could look into the windows. And you put yourself off the second story, you are going to be pyramiding right down into that. It is still a resident of Clarence, granted they are renting, it is a duplex, they still deserve privacy. Mr. Rivett said AThat wasn't my intent at all.@ Mr. Skaine said AWell that is the way you came across that you are not going to be looking into them, you are going to be looking into them - especially at 200 feet. And you go up twenty feet to your second story, you are going to be right down and looking into them, into both yards. Not only the duplex but the one north of that also. Mr. Rivett said AInto the houses themselves? Or the yards?@ Mr. Skaine said AWell, the yards but the duplex, that one you are going to be looking right into their windows. Mr. Rivett said AThe one farther to the north?@ Mr. Skaine said ANo, the first one, the duplex. Put yourself up twenty feet, I mean at your level where you are at right now, yes, okay you are not going to do it. I am with Mr. Newton I think we have done this before where we have stepped them back 125, 150, 150, 150, and then step them back down to 125. I think 150 is reasonable. One hundred fifty for a front yard, I don't see many kids playing in front yards anymore, number one. That is an excuse that is long overdue. The toys that these parents are putting in for the kids are all in the backyard, I don't see anyone playing in front. They are planning on putting the kitchen window in the front of the house, and his wife could keep an eye on the children when she is doing the dishes. Mr. Skaine said he agrees with Mr. Newton, he doesn't like the 200 foot setback. Mr. Gatti asked if the other lots were still up for sale. Yes, they are. Mr. Gatti asked Mr. Rivett if the lots are the same size as his, and how long he has owned the lot. Mr. Rivett said that they are promoting the same size lots, and he has owned the lot for one week. Mr. Gatti said ASo, you bought it without knowing you could get the variance is that right?@ Mr. Rivett said AYes.@ Gatti asked AWhat are you going to do if you don't get the variance?@ Mr. Rivett said AStill building.@ Mr. Gatti said AAt 100 feet?@ Mr. Rivett said ANo, not at 100 foot.@ Mr. Gatti asked AWhat size

house are you planning?@ The house will be a little over 2000 square feet. Arthur Henning asked When you said you were going to build, but not at one hundred foot, what are you going to do if we deny this variance?@ Mr. Rivett said AIf I don't get any variance at all, I don't know, I may put the land up for sale. We really like the area. I never even thought about it. I probably would build at one hundred feet, but obviously that would not be my first choice. John Brady said AI think what we have is a yes and a no. Not going back 200 feet, but around 150 if you would accept that. That is one way. Two hundred is not accepted, I know when I stopped and looked at it, I couldn't come up with giving you 200 feet. Mr. Newton and Mr. Skaine seem to agree on that also. So we will compromise if you would like that, just say I would like that. Mr. Rivett said AYes@.

ACTION:

Motion by Ronald Newton, seconded by Raymond Skaine to deny Appeal No III as written.

ALL VOTING AYE. MOTION CARRIED.

Motion by Ronald Newton, seconded by Raymond Skaine to allow a variance at 150 foot total setback at 6285 Kraus Road.

ALL VOTING AYE. MOTION CARRIED.

On the Question?

Mr. Rivett asked if this would establish the line for the other homes at 150 feet? Yes it would. Someone else is not going to come in and get 200 feet. Mr. Rivett said AThat is fair enough.@

Ron Newton said AExcept the house to the north. We are going to try and bring it in at 125 feet.@

APPEAL NO IV
Ian McPherson
Residential A

Requests the Board of Appeals approve and grant a ten foot (10') variance creating a twenty five foot (25') front lot line setback for the construction of a new garage at 5840 Creekview Drive.

DISCUSSION:

For the record, Mr. McPherson said the agenda states Residential A, and his property is zoned Agricultural. Mr. McPherson said he would like to put the garage in the existing paved area. It is where he parks his cars right now. It will be attached to his existing garage. It will blend in with the house, and in the winter it will provide blockage from the snow. No one on the board had a problem with the request.

ACTION:

Motion by Raymond Skaine, seconded by John Gatti to approve Appeal No IV as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO V
Robert Waters
Residential A

Requests the Board of Appeals approve and grant two variances:

1. A two foot (2') variance creating an eighteen foot (18') height maximum for the construction of a new garage at 5220 Donnington Road.
2. A sixty four square foot (64 sq.ft.) variance creating a seven hundred eighty four square foot (784 sq.ft.) detached garage at 5220 Donnington Road.

DISCUSSION:

Mr. Waters said they have four cars and an existing two car garage. He would like to have room for a work area, his tractor, as well as a storage area above, seeing as their home does not have a basement. The new garage will hopefully look like it has been there for awhile, and the look will be like the look of the existing home. They own the woods next door.

ACTION:

Motion by Ronald Newton, seconded by John Gatti to approve Appeal No V as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VI
Mary Ann Bliznik
Residential A

Requests the Board of Appeals approve and grant a five foot (5') variance creating a five foot (5') side lot setback line for the construction of a new garage at 4250 Fireside Drive.

DISCUSSION:

The applicant said they would like to turn the existing garage into a family room, and build a new garage that would be suitable for their needs. This house was built in 1940 and has never been expanded in any way. No one on the board had any problem with the request.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No VI as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VII
Al Maroone Ford
Major Arterial & Commercial

Requests the Board of Appeals approve and grant two variances:

1. A seventeen foot (17') variance creating a thirty seven foot (37') height for a freestanding sign at 4045 Transit.
2. A seventy square foot (70 sq.ft.) variance creating a one hundred thirty square foot (130 sq.ft.) sign at 4045 Transit Road.

DISCUSSION:

The applicant said the height is very important for visibility on Transit Road, the sign is visible not too far from exit 49 on the Thruway. It is easy for people to see there is a Ford dealership there. The existing sign is probably two feet higher and has more square footage than the new one. It is forty years old. The new sign will be in the exact same location. The old sign will come down, and the new sign will go up. Ford is changing the look of their signs, and it is a franchise requirement. If the sign is not approved two things might happen. They would request Ford to let them keep the existing sign. If it is part of a franchise agreement, then Ford would get involved. Ron Newton said he doesn't think signs sell cars. It is service and the reputation for a good deal, the sign is immaterial. We just turned down Chevrolet, and what would they think if this was approved?

The applicant said if he was asking for a bigger sign or a higher sign than the sign that already exists he could understand. Ray Skaine said he objects to the 37 foot height. They have the option to keep the existing sign or come into compliance.

ACTION:

Motion by Raymond Skaine, seconded by Ron Newton to DENY Appeal No VII as written.

Arthur Henning	NAY
Ron Newton	AYE
Ray Skaine	AYE
John Gatti	NAY
John Brady	AYE

MOTION CARRIED.

APPEAL NO VIII

Linda Clark
Agricultural & Residential A

Requests the Board of Appeals approve and grant a ten foot (10') variance creating a zero foot (0') front lot line setback for the free standing sign located at 8469 Sheridan Drive.

DISCUSSION:

Linda Clark stated that 26% of her business is the result of her sign. The sign she has is in violation of the law, and several neighbors have mentioned it at variance hearings. Two other neighbors have had to actually move their signs to make them comply with the requirements.

John Gatti said A I feel that it has to be moved because of the fact that we have made such a case against all the other people to have their signs where they belong, and I feel you have to go along with this also.@ Raymond Skaine said AI agree with Mr. Gatti. The reason you state is that you are in the leach field. But if you just move it back you won't be in the leach field.@ Linda said she went through this with her sign at the location down the street at 8185 Sheridan, and she thought it had been placed correctly this time. Linda said she had five people, the Town Engineer, people from the New York State D.O.T. as well as her sign people all there to determine the proper location of the sign. She believes she is 2 feet 9 inches off where she should be, but not ten feet. At the time Sheridan was under construction, and they took a lot of measurements. At least her sign does not destroy the character of the neighborhood. Linda said she thinks there should be some flexibility. When sewers or sidewalks come, she would move it then. The neighbors don't have a problem with it, why fix it if it isn't broke?

Why interfere with the leach field? Ron Newton asked Linda Clark AWhy isn't it where it is supposed to be if you have gone through all this for the second time? Why didn't you measure from the building? Your survey is going to locate your building, not Sheridan Drive.@ Linda said they did (the five people) a lot by eye. Ron said AYour sign is out of position. You are asking us to change the Town requirements to fit your sign that you put where you should not have put it. We are asking you to move it because we want the signs back from the road. That is what we have done with everybody on the road, and you should not be treated differently.@ Ray Skaine said AYour sign has always been brought up, and will continue to be brought up. Why did you grant that one? If we say your sign can stay where it is, we are in fact lying to those other people, because we were not aware of your sign until these other people came in and made us aware of it. The letter of the law says you are in violation of the law.@

ACTION:

Motion by Ronald Newton, seconded by Raymond Skaine to DENY Appeal No VIII because it has an effect on the character of the neighborhood if someone has a sign ten feet ahead of anyone else.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO IX
Louis Tomassi
Residential A

Requests the Board of Appeals approve and grant a one foot (1') variance creating a ten foot (10') garage door height at new home at 9276 Via Cimato Drive.

DISCUSSION:

Mr. Tomassi told his architect to put in a ten (10') foot garage door, but when he drew it up it said a nine (9') foot door. He didn't catch it, and neither did Jeff that it was written nine foot on the plans. The purpose of the garage is for a recreational vehicle. It is thirty foot deep for the RV. When the house was being roughed he told his framer he wanted a ten foot garage door opening, and Jeff Wilson told him he would need a variance. He wants to keep the RV in the garage so no one has to see it, and that is the purpose of the garage door. If you look from the street it actually looks like a lot more, because the grade is actually 8 inches

too low. I have to bring it up for a ten foot door. That is why it looks so big. John Gatti said he has no problems with it, it is already there and the RV would look better inside than outside. Mr. Skaine said he has a recreational vehicle and his is 11'8" high. Ray asked Mr. Tomassi what kind of recreational vehicle he is going to get. Mr. Tomassi said he was looking at them on Niagara Falls Blvd, he works for Ford so it will be a Ford. He is not going to get a massive one. He didn't know he needed a variance, he told the framer to change the height from nine to ten feet. He is building his own home. Mr. Newton said it is not in keeping with the character of the neighborhood at all. It is what you see from the street. You are not going to be able to clear that with most RV's. Arthur Henning asked Mr. Tomassi what he would do if the board did not give him a variance. How much of a hardship would it be for you? Mr. Tomassi said he would have to call his framer to put in an extra header over the garage door. It is not going to create a hardship where it costs thousands of dollars. He got the idea from his trim carpenter who lives in Martha's Vineyards. He has ten foot garage doors on his house. He gave me the idea so I could put the RV inside the second garage. This is the second house he has built in Clarence, he used to live on Newberry Ct. His neighbors on either side did not have a problem with it.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No IX as written.

Arthur Henning	AYE
Ronald Newton	NAY for reasons given
Raymond Skaine	AYE
John Gatti	AYE
John Brady	AYE

MOTION CARRIED.

Meeting adjourned at 8:30 p.m.
John P. Brady, Chairman